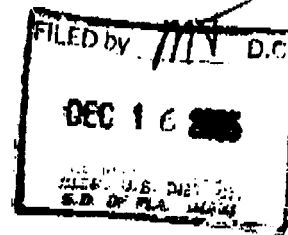


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 90-10037-Civ-Moore

Florida Key Deer,
Key Largo cotton mouse, Key Largo woodrat,
Key tree-cactus, Lower Keys marsh rabbit,
Schaus' swallowtail butterfly, the silver rice
rat, and the Stock Island tree snail,
NATIONAL WILDLIFE FEDERATION,
FLORIDA WILDLIFE FEDERATION,
and DEFENDERS OF WILDLIFE



Plaintiffs,

vs.

R. DAVID PAULISON¹, in his official capacity
as Acting Director, Federal Emergency
Management Agency ("FEMA"), Department of
Homeland Security, and GALE NORTON, in her
official capacity as Secretary of the United States
Department of the Interior,

Defendants.

**ORDER MODIFYING INJUNCTION (DE # 237) AND
DENYING MOTION TO INTERVENE (DE # 330) AS MOOT**

THIS CAUSE came before this Court on the Plaintiffs' and Federal Defendants' ("the Parties") "Joint Motion to Modify Injunction" and the "Motion to Intervene" filed by Sandler at Greater Marathon Bay LLC (DE # 330). Having reviewed the applicable pleadings and law, it is

ORDERED AND ADJUDGED that the Parties' joint motion is GRANTED.

IT IS HEREBY ORDERED that the following properties are deleted from the list of

¹ In his official capacity, Acting Director R. David Paulison is automatically substituted as co-Defendant, in place of Michael D. Brown, pursuant to Fed. R. Civ. P. 25(d)(1).

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[signature]

"Monroe County Real Estate Numbers in Suitable Habitat 9/05" (DE # 238) and are therefore not subject to the Injunction established by Order of this Court on September 12, 2005 (DE # 237):

1. Mandalay subdivision on Key Largo near MM 98.5 oceanside (corner of E. First Street, E. Second Street, and First Avenue) (RE #00554720-000000 and 00554720-000100);
2. Tract C, Blue Water Trailer Village Section 1 in Tavernier (corner of Burton Drive and US 1 at MM 92.5 oceanside) (RE #00488730-000000);
3. Wet Net property on Upper Matecumbe Key near MM 82.5 (between US 1 and the Old Highway) (RE #00095920-000100, 00095980-000100, and 00096000-000000);
4. Falcon Pass Apartments in Marathon near MM 50.5 oceanside (next to Wooden Spoon Restaurant; opposite corner of US 1 & Aviation Blvd) (RE #00103560-000200);
5. Block D, Lot 22, Puerta del Sol in Marathon near MM 50.5 oceanside (vacant lot adjoining house at 321 66th Street) (RE #00341680-000000);
6. Block 8, Lots 8-11, Cutthroat Harbor Estates on Cudjoe Key (between US 1 and La Fitte Drive near MM 22.5 oceanside) (RE #00178350-000000, 000178360-000000, 00178370-000000, and 00178380-000000);
7. Part of Tract B, Porpoise Point Section 5 on Big Coppitt Key (corner of Emerald Drive, Sapphire Drive, and US 1 near MM 10.5 bayside) (RE #00156320-000000);
8. Park Village Development on Stock Island near MM 4.5 oceanside (bordered by 6th Ave, 7th Ave, Cross St, and 5th Street) (RE #00131180-000000 through 00131310-000000);
and
9. Sandler property (bay side of Marathon at approximately 37th to 39th Streets)

(RE # 00336980-000000, 00336990-000000, and 00337000-000000).

10. Dog Track Property on Stock Island near MM 4.5 oceanside, (corner of 5th Ave and Shrimp Road) (RE #00123800-000101).

11. Tortuga West Development on Stock Island near MM 4.5 oceanside (corner of Maloney Ave. and Peninsular Rd.) (RE # 00126200-000000; 00126240-000000; 00126260-000000).

The property description and location information is included for ease of reference only. To the extent there is any ambiguity based on the property description and location information, the Court's Order dated September 12, 2005 (DE # 237) is modified only with respect to the specific folio (RE) numbers identified herein.

IT IS FURTHER ORDERED THAT the definition of "new development" in this Court's Order dated September 12, 2005 (DE # 237) is hereby clarified as follows:

"New development" is defined as any residential or commercial development where construction of the structure had not yet begun as of September 12, 2005. Reconstruction, redevelopment, renovation, replacement or expansion of a structure that existed on the site prior to September 12, 2005 ("the action") shall not be considered "new development," if:

(1) the action results in the same use or a less intensive use; (e.g., single family home for single family home, duplex for duplex, multifamily for multifamily with the same or fewer number of units, commercial for commercial, duplex to single family home, or similar net reduction in the number of dwelling or commercial units); and

(2) the action no more than doubles the footprint or square footage of the original structure, or totals no more than 1500 square feet, whichever is larger; and

(3) the action does not entail clearing or using any areas on the site outside of areas that were cleared, paved, or within the footprint of the pre-existing structure on September 12, 2005.

In order for a property owner to qualify for flood insurance under the National Flood Insurance Program ("NFIP") in conjunction with any reconstruction, redevelopment, renovation, replacement or expansion of a structure on property included in the list of Monroe County Real Estate Numbers in Suitable Habitat 9/05" (DE # 238), the owner shall obtain from the local government having jurisdiction to issue a building permit for that property a certification to FEMA and FWS that, at the time the permit is issued, the proposed project complies with the parameters set forth in paragraphs (1), (2), and (3) above; and a second certification to FEMA and FWS after passing final inspection that the property, as built, complies with the parameters set forth in paragraphs (1), (2), and (3) above.

A mobile home replaced with a modular home, or replaced by a home built by traditional methods, shall be considered the "same use" for purposes of this Order.

Nothing in this definition shall be construed to allow destruction of any native vegetation that existed on September 12, 2005, or the use of any area that had native vegetation on September 12, 2005.

Nothing in this definition shall be construed to allow any reconstruction, redevelopment, renovation, replacement or expansion of a structure that is not otherwise permissible under applicable local zoning and building ordinances.

Nothing in this definition shall be construed to require a property owner to seek a local government permit for any activity that does not otherwise require local government permitting pursuant to applicable local zoning and building ordinances.

Nothing in this definition or in the Court's previous Order (DE # 237) shall be construed to limit the applicability of any existing flood insurance policy pursuant to the NFIP or to preclude the issuance of flood insurance for existing developments (i.e., existing on the site prior to September 12, 2005 and not involving the reconstruction, redevelopment, renovation, replacement or expansion of a structure that existed on the site prior to September 12, 2005) upon the sale or transfer of such property, regardless of whether such property is included in the list of "Monroe County Real Estate Numbers in Suitable Habitat 9/05" (DE # 238).

The "Motion to Intervene" filed by Sandler at Greater Marathon Bay LLC (DE # 330) is hereby denied as moot.

DONE AND ORDERED, in Chambers, at Miami, Florida, this ~~14th~~ 15th day of December, 2005.


U.S. DISTRICT COURT JUDGE
K. MICHAEL MOORE

copies provided:

All counsel of record